

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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CC:PSI:B01  
PLR-127020-08  
Date:  
July 31, 2008

### Legend:

X =

Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to the letter dated June 12, 2008, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code ("Code").

### Facts:

You have represented that the facts are as follows. X was incorporated on Date 1, and made an election to be treated as an S corporation effective Date 1. On Date 2, a portion of the stock of X was issued to Y, which was not an eligible S corporation shareholder. On or about Date 3, the termination of the S election was discovered and, on Date 4, steps were taken so that X became a small business corporation.

X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

Law and Analysis:

Section 1361(a)(1) defines an “S corporation” as a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

In Revenue Ruling 92-73, 1992-2 C.B. 224, the IRS held that a trust that qualifies as an IRA under § 408(a) is not a permitted shareholder of an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation is treated as an S corporation during the period specified by the Secretary.

Conclusion:

Based solely on the facts submitted and representations made, we conclude that X's election to be treated as an S corporation terminated on Date 2. We also conclude that the termination constituted an “inadvertent termination” within the meaning of § 1362(f).

Under the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 2, and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d).

Except as expressly provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed as to whether X is an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

*Dianna K. Miosi*

Dianna K. Miosi  
Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: